

Edward J. Maney
Chapter 13 Trustee
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	CHAPTER 13 PROCEEDINGS
)	
)	CASE NO. # 2: 18-00937-DPC
LUCIA RAYA,)	
)	TRUSTEE'S EVALUATION AND
)	RECOMMENDATION(S) REPORT WITH
)	NOTICE OF POTENTIAL DISMISSAL IF
)	CONDITIONS ARE NOT SATISFIED
)	RE: CHAPTER 13 PLAN
(Debtor(s)))	Docket #10

Edward J. Maney, Trustee, has analyzed the Debtor(s) Chapter 13 Plan and supporting documents and submits the following evaluation and recommendation(s):

General requirements:

- a. Due to the possibility of errors on the claims docket, it is the attorney's responsibility to review all proofs of claim filed with the Court and resolve any discrepancies between the claims and the Plan prior to submitting any proposed Order Confirming Plan to the Trustee. Please submit a copy of the Court's Claims Register with any submission of the Order Confirming.
- b. Requests by the Trustee for documents and information are not superseded by the filing of an amended plan or motion for moratorium.
- c. The Trustee will object to any reduction in the Plan duration or payout in a proposed Order Confirming Plan unless an amended or modified plan is filed and noticed out.
- d. The Debtors are required to provide directly to the Trustee, *within 30 days after their filing*, copies of their federal and state income tax returns for every year during the duration of the Chapter 13 Plan. This requirement is to be included in any Order Confirming.
- e. The Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order shall not constitute an informal proof of claim for any creditor."
- f. The Trustee requires that any proposed Order Confirming Plan state: "Debtor is instructed to remit all payments on or before the stated due date each month. Debtor is advised that when payments are remitted late, additional interest may accrue on secured debts, which may result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured before the Case can be discharged. This requirement is effective regardless of Plan payments suspensions, waivers or moratoriums, and must be included in any Plan Confirmation Orders."

- g. At the time of confirmation, the Trustee will require the Debtors to certify that they are current on all required tax filings and any domestic support orders.
- h. At the time of confirmation, the debtor(s) are required to certify, via language in the Order Confirming, that they are current on all payments that have come due on any Domestic Support Orders since the filing of their case and that they are current on all required tax return filings [pursuant to 11 U.S.C. §1308].
- i. DEBTORS / DEBTORS' COUNSEL REMINDER - A letter is to be submitted to the Trustee, accompanying any Order Confirming, addressing all issues as they are listed in the Trustee's Recommendation. In addition, all documents (ex: tax returns, paystubs etc.) submitted to the Trustee must be redacted – in compliance with Fed.R.Bankr.P.9037 -- by debtors and/or their counsel.

Specific Recommendations:

1. The Trustee requires the debtors supply a copy of bank statement that reveals the balance on hand -- in all their bank accounts -- on the date of their filing of their case.
2. TruWest Credit Union (2015 Chrysler 300) has filed an objection to the Plan. The Trustee requires the objection to be resolved prior to confirmation of the Plan.
3. The proof of claim filed by United Consumer Financial/Kirby Cleaning System (vacuum - claim #13) differs by classification and/or amount from this creditor's treatment under the Plan. To resolve this discrepancy, the Trustee requires either; a) Debtor object to the Proof of Claim; b) the creditor sign-off on an Order Confirming; c) the Order Confirming be altered to pay the creditor pursuant to the Proof of Claim including payment of the contract rate of interest; or d) Debtor file an Amended Plan to provide for the creditor's claim as shown by the Proof of Claim.
4. The Chapter 13 Plan states that the Internal Revenue Service will be paid an amount greater than that listed on the proof of claim [#15]. The debtor(s) may use the lesser claim amount in the Stipulated Order Confirming Plan.
5. Including item #2 above, the Trustee's analysis reveals a \$6,822 funding shortfall, which must be cured before the Plan can be confirmed.
6. The Trustee notes Debtor's payroll deduction for a retirement or 401k plan loan repayment of \$412.19 per month. The Trustee requires documentation regarding the terms of the loan, current loan balance and completion date. If installment payments cease prior to the end of the Chapter 13 Plan, the Trustee requires Plan payments to increase accordingly.

7. The Trustee requires a **completed** and **signed** copy of Debtor(s) 2017 State and Federal tax returns, W-2's and 1099's. The Trustee informs the debtors that should these returns reveal significant tax refunds, if allowed to continue, this would constitute a diversion of disposable income. In that case, unless the plan is confirmed at 100% repayment to all creditors the Trustee would require the Debtor(s) adjust payroll tax deductions to prevent over- or under-withholding, amend Schedule I increasing Plan payments accordingly and provide two consecutive paystubs to verify this has been corrected or turn over tax refunds **2017, 2018 and 2019** of the Plan as supplemental Plan payments.
8. The Trustee notes that fees requested in the amount of \$7,000, plus \$100 costs, is in excess of the customary rate charged for Chapter 13 Debtor representation in this District. **Because the total fees requested exceed \$4,500.00, counsel must file a separate application for approval of the fees requested.** The application for fees must state the date the service was provided; detail the service provided; the person doing the work; the time expended in doing that service and the billing rate for each person listed in the fee application.

In summary, the Plan can be confirmed subject to the condition(s) noted above, adequate funding, and timely filed Stipulated Order Confirming, and Court approval. ***The Trustee requires that any Stipulated Order Confirming contain the "wet" signatures from the debtors (where applicable), debtors counsel and objecting creditors if there are any.*** General unsecured creditors (including secured creditors with unsecured deficiency balances) will be paid through the Trustee, subject to timely filed and allowed claims. Chapter 7 reconciliation requirement must be met given debtors' scheduled equity in non-exempt property at petition date. **You are hereby advised that the Trustee may lodge an Order of Dismissal should Debtor fail to resolve item(s) #1, #5, #6 above and submit a Stipulated Order Confirming to the Trustee for review and signature or request a hearing within 30 days from the date of the mailing of this Trustee's Recommendation.**

Date See Electronic Signature Block

EDWARD J. MANEY,
CHAPTER 13 TRUSTEE

Edward J.
Maney, Esq. Digitally signed by
Edward J. Maney, Esq.
Date: 2018.04.24
10:53:00 -07'00'

By:

Edward J. Maney ABN 12256
CHAPTER 13 TRUSTEE
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Copies of the forgoing
mailed on [see electronic signature],
to the following:

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Tolleson, Arizona 85353
Debtor

Douglas B. Price, Esq.
3514 N. Power Road
Suite #136
Mesa, Arizona 85215
Debtor's counsel

Jackie
Garcia

By:

Trustee's Clerk

Digitally signed by Jackie Garcia
DN: cn=Jackie Garcia, o=Edward J.
Maney, Trustee, ou=File Clerk,
email=jgarcia@maney13trustee.c
om, c=US
Date: 2018.04.24 14:26:21 -07'00'